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US diplomat bugged by Australia attacks prosecution of spy Witness K

Peter Galbraith says the prosecution of Australian spy and solicitor Bernard Collaery is 'pointless'



Former US ambassador Peter Galbraith says Australia should not prosecute Witness K and his solicitor, Bernard Collaery. Photograph: David Levene for the Guardian

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A decorated US diplomat spied upon by Australia as he represented Timor-Leste during lucrative oil and gas negotiations has described the prosecution of the two men who exposed the covert operation as “vindictive and pointless”.

The former US ambassador to Croatia Peter Galbraith was the lead negotiator for Timor-Leste during 2004 negotiations with Australia to carve up more than \$40bn of oil and gas reserves in the Timor Sea.

Galbraith only learned he and other Timor-Leste officials had been bugged through the actions of a senior Australian intelligence officer, known as Witness K, and his solicitor, Bernard Collaery, who believed the operation was unlawful and conducted purely for commercial purposes.

It was revealed last week that Collaery and Witness K are now facing criminal prosecution for conspiring to communicate intelligence secrets.

Speaking to the Guardian, Galbraith criticised the prosecution of Witness K and Collaery, urging Australia to “move on” from the unedifying episode.

He said the spy operation conducted against him and other Timor-Leste officials was “clearly a crime” under international and Timor-Leste law. If anyone was to be prosecuted, he said, it should be those who approved a covert operation against the government of a friendly nation purely for the financial gain of Australia and Australian companies.

“I was the target, therefore, the ‘victim’ of the bugging. I was leading the East Timor negotiations at that time,” Galbraith said. “But I’m not calling for prosecutions. I’m just pleased that East Timor finally got what it wanted.”

He said he was surprised at Australia’s continued pursuit of Witness K and Collaery.

“It’s just vindictive and pointless, it’s time to move on,” Galbraith said. “At last, after 18 years, Australia did the right thing [by signing the oil and gas treaty]. Accept the accolades, which are deserved, and move on.”

Collaery and Witness K are expected to first face an Australian Capital Territory magistrates court hearing on 25 July. There is a possibility the case could be suppressed entirely.

The notion of a secret prosecution against Collaery and Witness K has already drawn condemnation from senior legal figures, including a former New South Wales supreme court justice, Anthony Whealy, who said such a move would be “disturbing”.

Galbraith was shocked at the possibility of a secret prosecution. Speaking from the US, he said Australia might need an “upgrading of its civil liberties”.

“The notion that you can have a secret trial, without a jury, and send someone to prison for two years - it’s pretty shocking,” he said.

Speaking to the media last week, Collaery said Witness K was not a whistleblower, and had gone through the proper internal channels to raise concerns about the operation. He had made a complaint to the inspector general of intelligence and security, and was given permission to disclose the operation, Collaery said.

Collaery has been charged with communicating the information to ABC journalists.

He was, at the time, acting for Timor-Leste in a dispute over the bugging operation at the permanent court of arbitration in The Hague. Witness K was due to appear as a witness to the proceedings but was unable to travel because Australia refused to give him back his passport.

The case in the permanent court of arbitration was dropped by Timor-Leste last year as an act of goodwill in the lead up to the signing of a new resources treaty.

The attorney general, Christian Porter, last week said the decision to prosecute Witness K and Collaery was made independently by the commonwealth director of public prosecutions. He conceded he had given his consent to the prosecution but would not elaborate on his reasons for doing so.